

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN LEE MOY, #187335)	
Petitioner,)	
)	No. 1:18-cv-1425
-v-)	
)	Honorable Paul L. Maloney
SHERRY BURT,)	
Respondent.)	
)	

ORDER ADOPTING REPORT AND RECOMMENDATION
AND DENYING PETITION FOR HABEAS RELIEF

Steven Moy filed a petition for habeas relief under § 2254. The magistrate judge issued a report recommending the petition be denied. (ECF No. 11.) The magistrate judge concluded that the petition was not timely, Moy is not entitled to equitable tolling, and Moy has not proffered any evidence of actual innocence. Moy filed objections addressing only the magistrate judge's conclusion that equitable tolling does not apply. (ECF No. 25.)

After being served with a report and recommendation (R&R) issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam).

Moy contends he is entitled to an evidentiary hearing concerning his mental illness and whether the illness prevented him from timely filing a habeas petition. Moy's objection

is overruled. Moy's evidence of mental illness does not entitle him to an evidentiary hearing. As explained in the report and recommendation, the mental health reports do not establish that Moy was rendered incompetent or incapacitated such that he was unable to comply with the relevant statute of limitations. Moy has not addressed the other factual findings in the report and recommendation, the evidence of his filings in the state courts. To the extent that evidence demonstrates Moy has diligently pursued his rights, his efforts in the state courts undermine his claim that he was incapable of pursuing his federal remedies.

Accordingly, the Report and Recommendation (ECF No. 11) is **ADOPTED** as the Opinion of this Court. Moy's § 2254 petition for habeas relief is **DENIED** as barred by the statute of limitations. Finally, the Court concludes reasonable jurists would not disagree with this outcome and, therefore, **DENIES** a Certificate of Appealability.

IT IS SO ORDERED.

Date: April 18, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge